

Farmers await word on tobacco payments

Companies say buyout ends deal



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 The Courier-Journal

Tobacco farmers are awaiting an announcement from the U.S. Agriculture Department that could help decide whether they will get one last payment from the 1998 settlement between states and cigarette makers.

At stake in the decision, which could come today, is \$128 million for Kentucky growers. The payments from the Master Settlement Agreement are to end once the tobacco buyout takes effect.

Shelbyville, Ky., farmer Paul Hornback expects his 2004 check to exceed \$30,000 — money he plans to plow into his 90-acre tobacco operation. He said other farmers are counting on the money as well.

"I think it's very significant because growers have already budgeted for that money coming in," Hornback said.

But the tobacco companies have challenged the payments in a North Carolina court, claiming that the congressional buyout became effective this year and therefore nullifies their remaining 2004 payments. They also are asking for a refund of millions of dollars already made to the trust fund established for the payments, called Phase II.



BY PAM SPAULDING, THE C-J
 Victor Reyes lowered tobacco on Paul Hornback's farm in Shelbyville, Ky., yesterday. Hornback and other Kentucky farmers are hoping to get one last check from the 1998 master settlement agreement between cigarette makers and states. Hornback expects his 2004 check to exceed \$30,000.

QUICK TAKE

Last we knew

A North Carolina judge said he expects to rule Dec. 20 on whether tobacco companies must make another payment to tobacco farmers as part of the 1998 Master Settlement Agreement called Phase II.

Cigarette makers are responsible for funding the buyout, which President Bush signed into law as part of a sweeping corporate tax bill in October. The buyout will give growers \$10.1 billion over the next decade to quit raising leaf, switch to new crops or exit the business.

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The latest

Growers could know today whether U.S. Secretary of Agriculture Ann Veneman has notified cigarette makers that they must make their first payment under the tobacco buyout, a possible indicator as to when Phase II ends and the buyout begins.

Why it's news

Many Kentucky growers stand to gain about \$128 million in 2004 Phase II payments and many already have budgeted the money.

For more info

www.ncbusinesscourt.net

Agriculture Secretary Ann Veneman must give the tobacco companies at least 30 days' notice before the first buyout assessment is due. If Veneman has notified the companies by today that their first assessment must be paid by Dec. 31, that likely would bolster their case that the buyout becomes effective this year.

Attorney General Greg Stumbo's office believes that if the assessment notice isn't issued by today, the court will rule that the companies need to make their fourth-quarter Phase II payments and are not entitled to a refund for previous payments.

"We're really hopeful, of course, that that assessment is not issued until some later time," said Pierce Whites, Kentucky's deputy attorney general.

If the companies are "successful in arguing that this goes into effect in 2004, they're going to seek a refund of their first three quarters' payments — and that's going to be an additional \$320 million."

The growers' trust allows the companies to reduce their payments if a change in the law leads to new taxes or assessments by the government. The companies say the buyout triggered that provision and gives them an immediate right to begin lowering payments.

It's possible that so-called Phase I payments — money from cigarette makers used to fund Kentucky's agricultural diversification efforts — could be shifted to cover the lost Phase II money if the companies' challenge succeeds.

Kentucky law requires Phase I money to be used to supplement Phase II funds should they fall below \$114 million a year. But Kara Keeton, spokeswoman for the Governor's Office of Agricultural Policy, said legislators could amend the law in an effort to avoid depleting Phase I funds.

"The legislature has the ability during the (upcoming legislative) session to go back in and change the language if they so choose," Keeton said. "Otherwise, there is a potential that the Phase I money would have to be used to cover the Phase II payments for 2004."

Further straining the situation for Kentucky farmers is a freeze on Phase II payments while the North Carolina court considers the companies' request for a refund. The tobacco companies must inform the court on Thursday whether Veneman issues the first buyout

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assessment by today.

Judge Ben Tennille has set a hearing for Dec. 20, when he is expected to rule whether the buyout signed into law Oct. 22 became effective this year. Keeton said the governor's office expects the companies to appeal any ruling in favor of the tobacco states, possibly delaying the payments to farmers even more.

The governor's office, which oversees Kentucky's share of the tobacco-settlement money, believes Congress meant for the end of the Phase II payments to coincide with the start of the buyout.

U.S. Sen. Mitch McConnell, R-Ky., and nine other senators told Veneman in a letter last week that it was not the intent of Congress for the buyout to disrupt the 2004 Phase II payments. The letter maintained that passage of the buyout does not let the companies off the hook.

The Kentucky Farm Bureau also has petitioned the North Carolina court to keep the payments in place.

"To eliminate or diminish that cash flow at this point would be seriously disruptive in Kentucky's many tobacco-dependent communities," wrote Sam Moore, the farm bureau president, in a letter to the court.

Indiana farmers also would be impacted.

"We're dependent on it quite a bit to make some of our year-end payments," said Kim Imel, a Madison, Ind., grower. "... It's going to be sort of tough. None of us were expecting to lose some of our settlement money because of the buyout."

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